

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION

AMBER KEUMURIAN,

Plaintiff,

v.

XEROX EDUCATION SERVICES, LLC
d/b/a ACS EDUCATION SERVICES,

Defendant.

NOTICE OF REMOVAL

CIVIL ACTION NO. 5:17-cv-132

NOTICE that Defendant, XEROX Education Services LLC d/b/a ACS Education Services k/n/a Conduent Education Services ("CES"), pursuant to 28 U.S.C. §§ 1331, 1367, 1441, and 1446, hereby gives Notice of Removal of this action from the General Court of Justice, Superior Court Division, Iredell County, North Carolina, to the United States District Court for the Western District of North Carolina. In support of this Notice of Removal, Defendant respectfully shows this Court that:

I. BACKGROUND

1. CES is a Defendant in a civil action filed on March 17, 2017, in the General Court of Justice, Superior Court Division, Iredell County under Civil Action No. 17-CVS-706, entitled Amber Keumurian v. XEROX Education Services d/b/a AES Education Services (the "Action"). A true and accurate copy of the State Court File in this Action is attached hereto as Exhibit A.

2. Aside from the filing of the Summons and Complaint, no further proceedings have been had in the matter.

3. The Complaint makes allegations under the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.* and Chapter 75 of the North Carolina General Statutes.

II. **This Notice of Removal is Timely Filed**

3. This lawsuit is a civil action within the meaning of the Acts of Congress relating to removal of causes

4. Defendant CES received a copy of the pleading by service on its registered agent on July 5, 2017.

5. The removal of this action to this Court is timely under 28 U.S.C. § 1446(b) because this Notice of Removal is filed within thirty (30) days after July 5, 2017, which is the date Defendant CES first received the summons and complaint in this action.

6. The United States District Court for the Western District of North Carolina is the proper place to file this Notice of Removal under 28 U.S.C. § 1441(a) because it is the federal district court that embraces the place where the original action was filed and is pending.

III. **This Court Has Federal Question Jurisdiction**

7. Plaintiffs allege claims under the Telephone Consumer Protection Act, 47 U.S.C. §227 *et seq.* See Compl. ¶¶ 1-2, 175-181. Therefore, federal question jurisdiction exists over Plaintiffs' claims under 28 U.S.C. § 1331 because the resolution of Plaintiffs' claims will require adjudication of disputed questions of federal law.

8. To the extent the Complaint alleges statutory, state common law or other nonfederal claims, this Court has supplemental jurisdiction over any such claims under 28 U.S.C. § 1367 because those claims arise out of the same operative facts as Plaintiffs' claims under the TCPA and "form part of the same case or controversy under Article III of the United States Constitution." 28 U.S.C. 1367(a)

9. Because Plaintiffs' TCPA claims arise under the laws of the United States, removal of this entire cause of action is therefore appropriate under 28 U.S.C. § 1441(a)-(c).

VI. Notice of Removal to the Superior Court of Iredell County

10. Concurrently with this Notice of Removal, Defendants will file a copy of this Notice with the Superior Court of Iredell County, North Carolina. A copy of the written notice of the Notice of Removal to Federal Court is attached hereto as **Exhibit B**. In accordance with 28 U.S.C. § 1446(d), Defendant will give written notice to Plaintiff by contemporaneously serving this Notice of Removal on Plaintiff.

11. If any question arises as to the propriety of the removal of this action, Defendant respectfully requests the opportunity to present a brief and oral argument in support of its position that this case is removable.

WHEREFORE, Defendant CES, hereby gives Notice of Removal of the Action captioned above now pending in the Superior Court of Iredell County, North Carolina, to the United States District Court for the Western District of North Carolina and prays that this Court assume jurisdiction of the Action and make such other and further Orders as may be necessary to further the ends of justice.

Respectfully submitted, this the 1st day of August, 2017

s/ Michelle Massingale Dressler
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ATTORNEYS FOR DEFENDANT

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Notice of Removal* has this day been served using the ECF electronic filing system as noted below:

Shane Perry
Collum & Perry
109 W. Statesville Avenue
Mooresville, NC 28115
shane@collumperry.com

This the 1st day of August, 2017

s/ Michelle Massingale Dressler
Michelle Massingale Dressler
Attorney for Defendant